

**PUBLIC MATTER**

**FILED**

**APR 24 2017**

STATE BAR COURT CLERK'S OFFICE  
SAN FRANCISCO

**STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT - SAN FRANCISCO**

In the Matter of	)	Case Nos. 14-O-00459 (14-O-05543;
	)	15-O-11167); 16-N-10867-PEM (Cons.)
DALE IRVING GUSTIN,	)	
	)	DECISION AND ORDER OF
A Member of the State Bar, No. 76642.	)	INVOLUNTARY INACTIVE
<hr/>	)	ENROLLMENT

Respondent Dale Irving Gustin (respondent) was charged with failing to report judicial sanctions, failing to obey a court order, presenting an unwarranted claim or defense, threatening charges to gain an advantage in a civil lawsuit, the unauthorized practice of law, and violating California Rules of Court, rule 9.20. Even though respondent had notice of the trial dates, he failed to appear at the trial, and his default was entered. Thereafter, the Office of Chief Trial Counsel (State Bar) filed a petition for disbarment under rule 5.85 of the Rules of Procedure of the State Bar.<sup>1</sup>

Rule 5.85 provides the procedure to follow when an attorney fails to appear at trial after receiving adequate notice and opportunity. The rule provides that if an attorney's default is entered for failing to appear at trial, and if the attorney fails to have the default set aside or

<sup>1</sup> Unless otherwise indicated, all further references to rules are to the Rules of Procedure of the State Bar of California.



vacated within 45 days, the State Bar will file a petition requesting the court to recommend the attorney's disbarment.<sup>2</sup>

In the instant case, the court concludes that all of the requirements of rule 5.85 have been satisfied and, therefore, grants the petition and recommends that respondent be disbarred from the practice of law.

### **FINDINGS AND CONCLUSIONS**

Respondent was admitted to the practice of law in California on December 21, 1977, and has been a member of the State Bar since then.

#### **Procedural Requirements Have Been Satisfied**

On March 24, 2016, the State Bar filed and properly served a Notice of Disciplinary Charges (NDC) in case Nos. 14-O-00459 (14-O-05543; 15-O-11167) by certified mail, return receipt requested, and by regular mail addressed to respondent at his membership records address.

On May 23, 2016, the State Bar filed and properly served a NDC in case No. 16-N-10867 by certified mail, return receipt requested, and by regular mail addressed to respondent at his membership records address.

Respondent participated by telephone in a status conference in case No. 14-O-00459, etc. on May 9, 2016. At the time of the status conference, trial was set for September 13, 14, 15, and 16, 2016, at 10:00 a.m. On May 9, 2016, notice of the trial dates was served by first-class mail, postage paid, addressed to respondent at his membership records address. (Rule 5.81(A).)

Respondent filed an answer to the NDC in case Nos. 14-O-00459, etc., on May 12, 2016.

On June 13, 2016, respondent filed an answer to the NDC in case No. 16-N-10867.

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<sup>2</sup> If the court determines that any due process requirements are not satisfied, including adequate notice to the attorney, it must deny the petition for disbarment and take other appropriate action to ensure that the matter is promptly resolved. (Rule 5.85(F)(2).)

On June 27, 2016, the court held a status conference in case No. 16-N-10867.

Respondent did not participate in the status conference, at which time case No. 16-N-10867 was consolidated with case Nos. 14-O-00459, etc., and the court set trial in the matter for the same dates and time as in case Nos. 14-O-00459, etc. A status conference order setting forth the trial dates of September 13, 14, 15, and 16, 2016, at 10:00 a.m. was served on June 27, 2016, by first-class mail, postage paid, addressed to respondent at his membership records address.

On August 29, 2016, respondent participated in a pretrial conference in both matters.

Respondent attempted to resign from the State Bar of California by submitting to the court a Notice of Election to Resign as a Member of the State Bar of California on September 9, 2016, but the document was rejected for filing due to improper service and other deficiencies.

The court held a status conference in both matters on September 12, 2016, at which time respondent participated by telephone, and the court informed respondent that he needed to appear in-person the next day for trial. Respondent was adamant that he had tendered his resignation and therefore the court did not have jurisdiction over him. On September 12, 2016, the court filed a status conference order giving notice that trial in both matters remained the same (to wit, September 13, 14, 15, and 16, 2016, at 10:00 a.m.). The order was served by first-class mail, postage paid, addressed to respondent at his membership records address.

The State Bar appeared for trial on September 13, 2016, but respondent did not. The court entered respondent's default in an order filed on September 13, 2016. The order was properly served by certified mail, return receipt requested, addressed to respondent at his membership records address. (Rule 5.81(B).) The order notified respondent that, if he did not timely move to set aside his default, the court would recommend his disbarment. The order also placed respondent on involuntary inactive status under Business and Professions Code section 6007, subdivision (e), effective three days after service of the order, and he has remained

inactively enrolled since that time. The return receipt was returned to the court reflecting that the order was received by respondent on September 21, 2016.

Respondent did not timely seek to have his default set aside or vacated. (Rule 5.83(C)(2) [attorney has 45 days after order entering default is served to file motion to set aside default].) However, on November 28, 2016, respondent filed an amended motion to set aside his default and dismiss the matters.<sup>3</sup> The State Bar filed an opposition to respondent's amended motion on December 2, 2016. On December 5, 2016, the court filed and properly served on respondent an order denying respondent's amended motion to set aside his default and to dismiss the matters.

On February 8, 2017, the State Bar properly filed and served a petition for disbarment on respondent.<sup>4</sup> As required by rule 5.85(A), the State Bar reported in the petition that:

(1) respondent has been in contact with the State Bar since the entry of his default;<sup>5</sup> (2) there are no other disciplinary matters pending against respondent; (3) respondent has four prior records of discipline; and (4) the Client Security Fund has not paid out any claim as a result of respondent's conduct. Respondent did not respond to the petition for disbarment. The case was submitted for decision on March 8, 2017.

### **Prior Record of Discipline**

Respondent has four prior records of discipline. Pursuant to a Supreme Court order filed on April 13, 1995, respondent was suspended for one year, the execution of which was stayed, and he was placed on probation for two years subject to certain conditions of probation, including restitution. Respondent stipulated in this prior disciplinary matter that he failed to

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<sup>3</sup> Respondent sought to file an earlier motion to set aside his default. This motion was also late and was rejected due to improper service and because it did not bear a case number.

<sup>4</sup> The petition for disbarment was served by certified mail, return receipt requested, and by regular mail, addressed to respondent at his membership records address.

<sup>5</sup> Respondent has served various pleadings on the State Bar, and the parties had a least one conversation regarding the default, in which the State Bar declined to stipulate to set aside respondent's default in this matter.

(1) disburse client trust account funds properly; (2) render appropriate accounts to his client; (3) competently perform legal services; (4) take reasonable steps to avoid prejudice to his client before withdrawing from representation; and (5) perform the legal services for which he was employed.

On July 3, 2003, the State Bar Court filed an order imposing on respondent a private reproof with conditions for one year. Respondent stipulated in that matter to failing to perform legal services with competence and failing to respond to his client's status inquiries.

Pursuant to a Supreme Court order filed on September 9, 2015, respondent was suspended for two years, the execution of which was stayed, and he was placed on probation for three years subject to certain conditions of probation, including that he be suspended for the first six months of probation. Respondent did not appear for trial in this matter, and his default was entered.<sup>6</sup> The hearing department found that respondent repeatedly and recklessly failed to (1) perform legal services with competence; (2) keep his client reasonably informed of significant developments; and (3) release client papers and files despite requests that he do so.

Pursuant to a Supreme Court order filed on May 18, 2016, respondent was suspended for two years, the execution of which was stayed, and he was placed on probation for three years subject to certain conditions of probation, including that he be suspended for a minimum of the first six months of probation and will remain suspended until he pays specified sanctions and attorney fees and costs. The review department found that respondent violated court orders and failed to report sanctions to the State Bar.

### **The Admitted Factual Allegations Warrant the Imposition of Discipline**

Upon entry of a respondent's default, the factual allegations in the NDC are deemed admitted and no further proof is required to establish the truth of such facts. (Rule 5.82.) As set

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<sup>6</sup> Thereafter, the court set aside respondent's default only for the limited purpose of determining the appropriate level of discipline.

forth below in greater detail, the factual allegations in the NDC support the conclusion that respondent is culpable as charged, except as otherwise noted, and therefore violated a statute, rule or court order that would warrant the imposition of discipline. (Rule 5.85(F)(1)(d).)

**1. Case Numbers 14-O-00459 (14-O-05543; 15-O-11167)**

Count One – The State Bar failed to prove by clear and convincing evidence that respondent willfully violated Business and Professions Code section<sup>7</sup> 6068, subdivision (o)(3) (failure to report sanctions), as there is no evidence as to the basis for the imposition of the judicial sanctions which respondent failed to report to the State Bar. (Bus. & Prof. Code, § 6068, subd. (o)(3) [sanctions for failing to make discovery do not need to be reported to the agency charged with attorney discipline].) The court therefore dismisses this count with prejudice.

Count Two – Respondent willfully violated section 6103 (failure to obey a court order) by failing to comply with the May 14, 2014 Order After Hearing (Sanctions) in *Kalvans et al. v. Mizera*, Monterey Superior Court, case No. M92503.

Count Three – The court does not find that respondent willfully violated rule 3-200(B) of the Rules of Professional Conduct (prohibited objectives of employment). The factual allegations deemed admitted in this matter by the entry of respondent's default do not show, by clear and convincing evidence, that between July 5, 2013, and October 31, 2013, respondent continued employment by Mary Kalvans and Craig Rambo in *Kalvans et al. v. Mizera*, Monterey County Superior Court, case No. M92503, when he knew or should have known that the objective of such employment was to present a claim or defense in litigation that was not warranted under existing law. The court therefore dismisses this count with prejudice.

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<sup>7</sup> All further reference to section(s) refer to provisions of the Business and Professions Code.

Count Four – Respondent willfully violated rule 5-100(A) of the Rules of Professional Conduct (threatening criminal, administrative, or disciplinary charges) by communicating with counsel for the defendants in *Kalvans et al. v. Mizera*, Monterey Superior Court, case No. M92503, and threatening to present criminal charges, specifically forgery and/or perjury, against the defendants to obtain a settlement of \$450,000, and thereby obtain an advantage in a civil dispute with the defendants.

Count Five – Respondent willfully violated section 6068, subdivision (a) (attorney's duty to support constitution and laws of United States and California), by (1) filing pleadings and/or appearing on behalf of Nesenia Gonzales in *Gonzales v. Rodriguez (aka Gonzales v. Farmers Insurance)*, San Luis Obispo County Superior Court case No. CV138197; (2) filing pleadings and/or appearing on behalf of Willemke Bokma in *Bokma v. Backlund et al.*, case No. GNM128434, filed in Monterey County Superior Court; and (3) signing and filing a stipulation on behalf of Loren Nauta in *Nauta v. Bank of America*, case Nos. B248343 and B255962, filed in the Second District Court of Appeal, thereby holding himself out as entitled to practice law and actually practicing law between July 7, 2014, and January 2, 2015, when he was not an active member of the State Bar in violation of sections 6125 and 6126.

Count Six – Respondent committed an act of moral turpitude in willful violation of section 6106 (moral turpitude) by filing pleadings and appearing in court on behalf of Nesenia Gonzales in *Gonzales v. Rodriguez (aka Gonzales v. Farmers Insurance)*, San Luis Obispo County Superior Court case No. CV138197; (2) filing pleadings and appearing on behalf of Willemke Bokma in *Bokma v. Backlund et al.*, case No. GNM128434, filed in Monterey County Superior Court; and (3) filing a stipulation on behalf of Loren Nauta in *Nauta v. Bank of America*, case Nos. B248343 and B255962, filed in the Second District Court of Appeal, thereby holding himself out an entitled to practice law and actually practicing law between July 7, 2014,

and January 2, 2015, when he was grossly negligent in not knowing that he was not an active member of the State Bar.

**2. Case Number 16-N-10867 (Rule 9.20 Compliance Matter)**

Count One – Respondent willfully violated California Rules of Court, rule 9.20, by failing to file a declaration of compliance with California Rules of Court, rule 9.20, with the clerk of the State Bar Court, in conformity with the requirements of rule 9.20(c), by November 18, 2015, as required by Supreme Court order number S226413.

Count Two - Respondent wilfully violated section 6106 by committing an act of moral turpitude by stating in writing, on December 3, 2015, in his pleading entitled “ ‘Declaration of Compliance With Rule 9.20 Regarding Notice to Clients and Withdrawal From All Cases Pending as of June 30, 2015 and the Ruling in the Supreme Court Order Filed September 9, 2015,’ ”<sup>8</sup> which was filed on February 22, 2015, in the State Bar Court, that as of June 30, 2014, he “ ‘has performed no legal work for any of his clients that had pending cases in which he was the Attorney of Record or for any other persons,’ ” when he was grossly negligent in not knowing the statement was false.

**Disbarment is Recommended**

Based on the above, the court concludes that the requirements of rule 5.85(F) have been satisfied and respondent’s disbarment is recommended. In particular:

- (1) the NDCs were properly served on respondent under rule 5.25;
- (2) respondent had adequate notice of the trial dates prior to entry of the default;
- (3) the default was properly entered under rule 5.81; and

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<sup>8</sup> NDC in case No. 16-N-10867, page 2, lines 15½ - 17½.



(4) the factual allegations in the NDC deemed admitted by the entry of the default support a finding that respondent violated a statute, rule or court order that would warrant the imposition of discipline.

Despite actual and adequate notice and opportunity, respondent failed to appear for trial in this disciplinary proceeding. As set forth in the Rules of Procedure of the State Bar, the court recommends disbarment.

### **RECOMMENDATION**

#### **Disbarment**

The court recommends that respondent Dale Irving Gustin be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys.

#### **California Rules of Court, Rule 9.20**

The court also recommends that respondent be ordered to comply with the requirements of California Rules of Court, rule 9.20, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order in this proceeding.

#### **Costs**

The court further recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and that the costs be enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

### **ORDER OF INVOLUNTARY INACTIVE ENROLLMENT**

In accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders that Dale Irving Gustin, State Bar Number 76642, be involuntarily enrolled as an

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inactive member of the State Bar of California, effective three calendar days after the service of this decision and order. (Rule 5.111(D).)

Dated: April 24, 2017

  
PAT E. McELROY  
Judge of the State Bar Court

## CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of San Francisco, On April 24, 2017, I deposited a true copy of the following document(s):

DECISION AND ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

in a sealed envelope for collection and mailing on that date as follows:


by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

DALE IRVING GUSTIN  
DALE I. GUSTIN  
945 SPRING ST STE 9  
PO BOX 764  
PASO ROBLES, CA 93447

by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

Robert A. Henderson, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on April 24, 2017.

  
Laurretta Cramer  
Case Administrator  
State Bar Court